IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.CJ.

APPEAL NO. 617 OF 2006
IN
NOTICE OF MOTIION NO.2930 OF 2003
IN
SUIT NO.878 OF 2001

Motilal Manshi Shah .. Appellants
v/s.
Suryakant K. Sheth and others .. Respondents

Mr.Mahendra Shah, senior counsel with Mr.Y.R.Shah i/by Mr.Y.R.Shah for the appellants.

Mr.Virag Tulzapurkar, senior counsel i/by M/s.Shah & Sanghvi for the respondent Nos.1 and 3.

Ms.Alpana Ghone i/by Ms.M.R.Kapadia for the respondent No.2.

CORAM : R.M.LODHA &
S.A.BOBDE, JJ.

DATED : 21ST AUGUST, 2006.

P.C.

We heard Mr.Mahendra Shah, senior counsel for the appellants and Mr.Virag Tulzapurkar, senior counsel for the respondent Nos.1 and 3 for quite some time.

2. Having considered the material available on record, we

find that the prima facie finding of the learned motion Judge that the so called agreement dated 8.9.2000 (referred to by the learned motion Judge as receipt), is not a concluded contract, does not suffer from any factual or legal infirmity. It is true that the document dated 8th September, 2000 may not be a receipt. However, a careful reading of the said document (in English), shows that the payment of balance price of Rs.35,00,000/- was subject to many things viz. (i) clearance of official documents; (ii) legal paper; (iii) the agreement and (iv) the remaining rent receipt. This shows that the document dated 8th September, 2000 was executed when the parties were at the negotiation stage and the agreement for sale setting out the terms and conditions was yet to be executed. That the document dated 8.9.2000 was executed at the negotiation stage is supported by the contemporaneous documents viz. the correspondence between the parties, particularly the letter dated 14th November, 2000 sent by the defendant No.1 to the plaintiff and the plaintiff's reply to the said letter on 18.11.2000. It further gets support from the letter dated 19.12.2000 sent by the plaintiff's advocate to the advocate for the defendant. The material part thereof reads, “it pertaining to note that in clause (c) of the draft agreement under your covering letter dated 14.12.2000”. That clearly shows that the formal agreement for sale containing all relevant terms and conditions was to be executed after 8.9.2000 and as a matter of fact, the draft agreement was sent by the defendant alongwith his covering letter dated 14.12.2000.

3. For all these reasons, prima facie, it appears that no concluded contract for sale of the subject property came into existence on the execution of the document dated 08.09.2000.

4. Besides that, it is admitted case that the society viz. The B.B. & C.I. Railway Employees Co-operative Housing Society Ltd. had refused permission to the vendor for sale of the subject property to the plaintiff. It is not in dispute that the plaintiff's wife is in possession of the part of the disputed premises and carries on business in the name of Nagrik Electricals.

5. In his letter dated 12th December, 2000, the advocate for the defendant intimated to the plaintiff that the society had informed the defendant that unless and until the breaches are rectified, the society may not give necessary permission. Interalia, the breaches included illegal structure constructed by the Nagrik Electricals. It also appears from the available material that the plaintiff was in know of the fact that until the society grants permission, the proposed sale cannot take place.

6. The senior counsel for the plaintiff sought to submit that the brother of defendant No.1 happened to be the President of the society and, therefore, he managed refusal from the society permitting the transfer of the subject property. The senior counsel also submitted that an illegal demand of Rs.11,00,000/- for granting the permission was made by the Chairman and Secretary of the society and a complaint to that effect was also made to the Registrar. The submission of the senior counsel does not convince us. These allegations were made for the first time in the year 2003 though the application for transfer made by the defendant was rejected way back in the month of January, 2001.

7. The plaintiff has failed to make out any prima facie case.

We are, thus, satisfied that no interference is called for in the impugned order.

8. Oral prayer made by senior counsel for the order of injunction against the defendant No.3 for eight weeks is rejected.

Needless to say that the observations made by the learned motion Judge in the impugned order and the observations made in this order are of prima facie nature and shall not influence the decision in the suit.

(R.M.LODHA, J.)

(S.A.BOBDE, J.)